

**ENTERED**

January 05, 2023

Nathan Ochsner, Clerk

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS  
CORPUS CHRISTI DIVISION

HECTOR PACHECO-MORALES, §  
§  
Plaintiff, §  
§  
VS. § CIVIL ACTION NO. 2:22-CV-00148  
§  
BOBBY LUMPKIN, *et al.*, §  
§  
Defendants. §

**ORDER ADOPTING MEMORANDUM AND RECOMMENDATION**

Pending before the Court is Plaintiff's complaint (D.E. 1, 12) for initial screening.

On August 24, 2022, United States Magistrate Judge Jason B. Libby issued a Memorandum and Recommendation (D.E. 11), recommending that Plaintiff's complaint be dismissed and that the dismissal be counted as a strike. After obtaining an extension of time, Plaintiff timely filed his objections (D.E. 17) on October 14, 2022.

The Magistrate Judge determined that Plaintiff's factual allegations addressed his complaints regarding the frequency and quality of medical care he received while he was held for a short time in transient status in the Texas Department of Criminal Justice (TDCJ) McConnel Unit after a colonoscopy. The M&R recommends dismissal because Plaintiff's allegations were insufficient to state a claim for deliberate indifference to a serious medical need or for discrimination based on disability.

Plaintiff's objections begin with reasserting his medical status. However, he then suggests that he was deprived of his right of access to the courts on the basis of retaliation

or a failure to protect. Such claims were not stated in his complaint (D.E. 1). And while he alluded to this in the Spears Hearing (D.E. 12), he indicated that he was filing a separate lawsuit addressing his access to courts. As such, Plaintiff has not stated a specific objection that addresses the analysis or conclusions of the Magistrate Judge or that pertains to this case. Consequently, any objections are overruled as moot or as insufficient under Federal Rule of Civil Procedure 72(b)(2) and 28 U.S.C. § 636(b)(1)(C).

Having reviewed the findings of fact, conclusions of law, and recommendations set forth in the Magistrate Judge's Memorandum and Recommendation, as well as Plaintiff's objections, and all other relevant documents in the record, and having made a de novo disposition of the portions of the Magistrate Judge's Memorandum and Recommendation to which objections were specifically directed, the Court **OVERRULES** Plaintiff's objections and **ADOPTS** as its own the findings and conclusions of the Magistrate Judge.

Accordingly, Plaintiff's case is **DISMISSED** with prejudice for failure to state a claim pursuant to 28 U.S.C. §§ 1915(e)(2)(B) and 1915A(b)(1). The Court further **ORDERS** that this dismissal count as a "strike" for purposes of 28 U.S.C. § 1915(g), and the Clerk of Court is **INSTRUCTED** to send notice of this dismissal to the Manager of the Three Strikes List for the Southern District of Texas at Three\_Strikes@txs.uscourts.gov.

ORDERED on January 5, 2023.

  
NELVA GONZALES RAMOS  
UNITED STATES DISTRICT JUDGE